

Plaintiff's Name ERNEST MILLER JR.
 Inmate No. T-97203
 Address P.O. BOX #3481
CORCORAN, CALIF. 93212
- CALIFORNIA STATE PRISON -

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA
 NORTHERN

ERNEST MILLER JR
 (Name of Plaintiff)

C 08 0009
 (Case Number)

vs. COMPLAINT

SI (PR)

Civil Rights Act, 42 U.S.C. § 1983

(CDC Deputy Secretary)
MR. JOE McGRATH
MR. Tom FETREL (Associate WARDEN)
MR. David Rannels (WARDEN)
B.M.U of HIGH DESERT STATE PRISON
 (Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes No

B. If your answer to A is yes, how many? One # 1#

Describe previous or pending lawsuits in the space below.

(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff HIGH DESERT STATE PRISON

Defendants DR. Roche MR. Silkey (MEDICAL)

2. Court (if Federal Court, give name of District; if State Court, give name of County)

EASTERN DISTRICT "SACRAMENTO CA"

3. Docket Number CV-00947 FFB-GGH4. Assigned Judge Ralph B. Beistline

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

6. Filing date (approx.) 4-17-2006 7. Disposition date (approx.) 10-22-07

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

If your answer is no, explain why not _____

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.
SEE ATTACHED

No If your answer is no, explain why not.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit.** Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant MR. JOE MCGRAH is employed as DEPUTY SECRETARY of C.D.C.
at SACRAMENTO - HEADQUARTERS

B. Additional defendants MR. TOM FETREL (ASSOCIATE WARDEN) of A.D.S.P
ALL
MR. DAVID RUNNELS (WARDEN)
% SERGEANT MR. D. MENDOCA of B.M.U.
% MR. J. SANCHEZ of B.M.U
% MS. J. BARRON of B.M.U
% MR. L. BISHOP of B.M.U

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

MR. TOM FETREL AND MR. DAVID RUNNELS ARE RUNNING AN ILLEGAL UNDER GROUND PROGRAM CALL B.M.U NOT IN THE PRISONERS RULE BOOK OR COURTS OF C.C.R. TITLE #75 OR PRISONERS RULE BOOK THE DOME BY LAW. ON 8-30-06 I WAS PLACED IN B.M.U. DUE TO I HAVE A CIVIL RIGHTS LAW SUIT ON MEDICAL AT HIGH DESERT STATE PRISON # CV-00947-DFL-GGH ON 8-23-06 I WAS SENT A NOTICE OF SUBMISSION PACKET, TO SEND BACK TO COURTS, THE NOTICE OF SUBMISSION PACKET CAME UP MISSING IN B.M.U D-5# ON 8-30-06 THEN % SGT. - D - SGT. MR. MENDOCA % MS. J. BARRON & % MR. J. SANCHEZ TOLD ME ON 9-3-06 WHILE WHILE GIVING (PAPER WORK LEGAL) AND COSMETICS PROPERTY. THIS IS B.M.U BASIC MANAGEMENT UNIT A.K.A BLACK MIS CONDUCT UNIT, YOU GET NOTHING, YOU ONLY COULD DO ONE CASE AT A TIME YOU GET NO PROPERTY, NO STORE CANTEEN, NO MAIL ONLY WHAT % GUARDS GIVE YOU AS WELL AS FOOD YOUR MONEY IS WORTH NOTHING HERE.

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

PRISONER SEEKS RELIEF OF MONEY DAMAGES OF INTENTIONAL DISCRIMINATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT (PEESE V. JEFFERSON) SCH-DIST NO. 145, 208 F. 3d 736, 740, (9th Cir 2000) AS WELL PRISONERS DUE HAVE RIGHTS OF THE DUE PROCESS CLAUSE (WOLFF V. McDONNELL) 418 U.S. 539, 556 (1974) DUE TO (PRISONER) BEING BLACK AND A RELIGIOUS CHRISTIAN MAN) AND CONSTANTLY DOING LEGAL LAW WORK IN PRISON WITH A LEGAL APPROVED CASE, OF A 1983* & CLAIM. FROM THE LOW INCOME CALIFORNIA SOCIETY CITY HIGH DESERT STATE PRISON HAS A NEW PROGRAM CALLED B.M.U TELLING BLACKS & OTHER RACE'S NOT WHITE. THEY CAN'T SPEND THERE MONEY IN THERE PRISON THEY CAN'T GET THERE MAIL, THEY CAN'T HAVE NO PROPERTY, ONLY IF THEY DO WHAT THE % STAFF THE LATIN SKINHEADS COWBOYS AT SUSANVILLE WANTS.

I declare under penalty of perjury that the foregoing is true and correct.

Date December 27th 2007

Signature of Plaintiff

Ernest Miller

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: AUG 07 2007

In re: Miller, T-97203
High Desert State Prison
P.O. Box 270220
Susanville, CA 96127

IAB Case No.: 0615196 Local Log No.: HDSP 07-0907

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Pimentel, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that while he has been housed in the High Desert State Prison (HDSP) Behavior Management Unit (BMU) he has been receiving substandard quality and quantity of food and that he is being served imitation food items. The appellant contends that the HDSP is violating California Code of Regulations, Title 15, Section (CCR) 3050 in that a wholesome nutritionally balanced meal is supposed to be served. The appellant requests that the quality and quantity of the meals be improved, and that all of the cooks be terminated.

II SECOND LEVEL'S DECISION: The reviewer found that a comprehensive and thorough review of the appellant's appeal was conducted. The reviewer found that food portions are not being minimized or reduced for the BMU population. All inmates are treated alike, whether in regard to serving size. The institution serves the State mandated Heart Healthy menu. The Heart Healthy menu is nutritionally analyzed to ensure requirements are met. Portion sizes are verified in several ways. One, by the menu and meal sample report. A food service supervisor will monitor the serving of meals in the BMU on a random basis. The appellant has not provided a compelling argument to support his claims that the food portions are too small and are used as a wanton infliction of pain.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The documentation and arguments are persuasive that the appellant has failed to support his appeal issues with sufficient evidence or facts to warrant a modification of the Second Level of Review. The current average caloric content of the institution's meals is between 2900 and 3200 per day. This figure is based upon the needs of a "grown, active adult" in keeping with the department's attempt to reduce fat and salt as specified in CDC Operations Manual Section 54080.6. The meals are established department-wide on an annual basis. The appellant's claim that food items are missing or that the portions are too small is not supported by any compelling or persuasive evidence contained in the appellant's appeal complaint. The serving of meals to the inmate population is monitored on a regular basis. As indicated by the institution, food service personnel and custody staff regularly monitor the serving of meals to the inmate population. This monitoring occurs during normal program activities in which food is served in each facility's dining halls as well as during lock downs when the serving of inmate meals is performed in each housing unit. Additionally, the meals are monitored for the BMU population and they are provided the same types and quantity of food; security concerns notwithstanding. The appellant has not provided any new or compelling evidence that would warrant a modification of the decision reached by the institution in this matter. Therefore, the appellant will not be afforded any relief at the Director's Level of Review.

B. BASIS FOR THE DECISION:

CCR: 3000, 3001, 3050, 3052, 3270, 3380

C. ORDER: No changes or modifications are required by the institution.

MILLER, T-97203
CASE NO. 0615196
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, HDSP
Appeals Coordinator, HDSP

TC. KITCHEN - STAFF

**INMATE/PAROLEE
APPEAL FORM**
CDC 802 (12/87)

Location: Institution/Parole Region

Log No.

Category 9

1. HOSPD1. 07-0907

Food Services

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

P.C. 832-5-B CITIZEN - COMPLAINT

NAME MILLER, Ernest NUMBER T-97203 ASSIGNMENT by-FACIAL-DISCRIMINATION P.C. 135194C1D-5-207 UNIT/ROOM NUMBER 204

A. Describe Problem: On JAN-3-07 in B.m.U.D-5-inmates were giving "BREAK-FAST" with PANCAKES SOAKING in SYRUP, Sougtie" with pieces broken off each one, then was told this is BASIC MANAGEMENT-UNIT. This is WORST THAN AD-SEG from #6 GUARDS, inmates are giving RICE not COOK, with one COFFEE Spoon size of food on THERE TRAY Cold, "No-HOT-foods." for BREAKFAST they are told they get no EGGS, Boiled or Fried, just IMMATION powdered EGGS - No CINNAMIN ROLLS - No BISCUIT - No FRENCH TOAST - nothing just WHATEVER THE PRISON DECIDES to give THIS YARD-UNIT. inmate E-MILLER #T-97203 was giving food-poisoning "STINGLES" on 4-6-06, CHECK MEDICAL RECORDS in D-6 - before THIS A VERY SERIOUS PROBLEM GUARDS do not buy PRISONERS THERE food. so why are if you need more space, attach one additional sheet. THEY SHORTING inmates LUNCH'S AND food TRAYS ?

B. Action Requested: Under California Code of REGULATIONS TITLE 15 SECTION C.C.R #3050 ARTICLE A. EACH inmate shall be provided a wholesome some-nutritionally balanced diet. NUTRITION LEVELS SHALL MEET THE RECOMMENDED DAILY ALLOWANCES ESTABLISHED. (A-2) inmates shall be served "two" hot-meals-daily. (REQUEST COOKS LOSE THERE Job position AND A BLACK-COOK WORK IN KITCHEN AT LEAST ONCE A WEEK AT H.D.S.P.)

Inmate/Parolee Signature: Ernest MillerDate Submitted: JAN-3-07C. INFORMAL LEVEL (Date Received: 2/17/07)

Staff Response: Partially granted: Your concerns pertaining to hot food and serving sizes. Has been addressed with food services staff assigned to the D-3 kitchen. Inmate workers are assigned through inmate assignment and must be food-handling cleared prior to being assigned to any food service area. Ethnic balance is always a prime consideration whenever assigning an inmate to a particular work area.

Staff Signature: of a chec CCI AC 4/ FOOD SERVICESDate Returned to Inmate: 2/22/07

D. FORMAL LEVEL in THIS PRISON THEY give YOU PEANUT BUTTER in A CUP, WITH DRUGS, OTHER THINGS not good in IT, FOR LUNCH no SEAL, A SERIOUS problem
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

NOTE: All this took place in SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER 2006, Also - JANUARY 1st WEEK of 2007, THEN ALL CHANGED THE FIRST TWO days of me writing this #602# complaint, I mean now we ARE getting back CINNAMIN-ROLLS, and BISCUIT, and sometimes REAL EGGS. BUT THE PROBLEM IS STILL going on with IMMATION foods, and one spoon size of foods, CAKE, ETC.

Signature: Ernest MillerDate Submitted: 2-25-07

CDC Appeal Number: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim Received

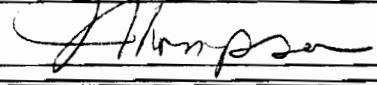
JAN 05 2007

NOT A SC

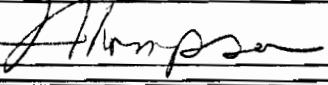
FEB 27 2007

APR 16 2007

HOSPD - 1000

First Level Granted P. Granted Denied OtherE. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 2-28-07 Due Date: 4-10-07Interviewed by: SCC SwayzeStaff Signature: Title: SCCDate Completed: 3/29/07Division Head Approved: 

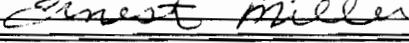
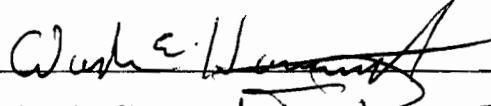
Returned

Signature: Title: A.U. B.S.

Date to Inmate:

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

I did TALK TO A SUPERVISING COOK MR. E SWAYZE on MARCH-27-2007 in AD-SEG-#D-8-#224. And I must say THESE people of C-D-C ARE NOT TELLING THE TRUTH you could HAVE THEM on Video CAMERA and THEY will STILL DENY IT THE IMMATATION (foods and fish) STILL EXIST. Also in "AD-SEG" is WORST with ALL THE foods THEY EVEN give ALL PAPER Lunett's THEY BREAK SEALS of BREAD-CHIPS-Cookies-EVEN Lunett MEATS AND WRAP IT in PAPER ALL STAIN Lunett's, EVEN CANTEEN food products THAT you SPEND YOUR money for. A MAJOR food DISCRIMINATION TO INMATE

Signature: Date Submitted: 4-12-07Second Level Granted P. Granted Denied OtherG. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 4-17-07 Due Date: 5-14-07 See Attached LetterSignature: Date Completed: 4/25/07Warden/Superintendent Signature: Date Returned to Inmate: 5-14-07

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

THE ONLY THING THAT REALLY CHANGED WAS THAT WE GET "FRIED REAL EGGS" sometimes on Sunday "BREAKFAST". THE IMMATATION (foods and fish) STILL EXIST. ALSO WE GET NO "FRUITS" AT THIS PRISON" WHY? ALL C-D-C PRISONS-GIVES AN APPLE for Lunett, EXCEPT THIS ~~ONE~~ PRISON. WE SEE ONE OLD ROTTEN BANANA LIKE ONCE A WEEK if WE'RE LUCKY. in "AD-SEG" they give ALL PAPER Lunett's THEY BREAK SEALS of BREAD-CHEESE-Lunett-MEATS-CHIPS-COOKIES-ETC AND WRAP IT in PAPER, ALL STAIN-Lunett's, EVEN STORE-CANTEEN food products THAT YOU SPEND MONEY for. DUE TO INTENTIONAL-DISCRIMINATION OF A PRISONER'S FOOD. A-1983 #42 U.S.C be file

Signature: Date Submitted: 5-8-2007

For the Director's Review, submit all documents to Director of Corrections

P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: Granted P. Granted Denied Other See Attached LetterDate: AUG 07 2007

State of California

Department of Corrections and Rehabilitation

High Desert State Prison

Memorandum

Date: March 29, 2007

To: Inmate Miller T97203
Housing Unit: D5-207L *Moved to AD-sec 2-224*

Subject: **APPEAL LOG #HDSP-07-00907**
FIRST LEVEL RESPONSE

APPEAL DECISION: Appeal Granted.

APPEAL ISSUE: You contend that the Food Service Department is using imitation food products and you are not receiving proper food portions.

A review of the HDSP list of "Inmates With Test of Adult Basic Education (TABE) Reading Scores of 4.0 or Less" indicates that you have a Reading Grade Point Level (RGPL) above 4.0. A review of the HDSP "Assistive Device Listing" reveals that you have no disabilities requiring special accommodation to achieve effective communication.

APPEAL RESPONSE: Inmate Miller, in reaching a decision on your appeal, your CDC 602 and its attachments, applicable sections of the California Code of Regulations Title 15, the Department Operations Manual (DOM) and your personal interview with Supervising Correctional Cook E. Swayze, were reviewed and considered.

On March 27, 2007, during your interview with Supervising Correctional Cook E. Swayze, you stated that the Food Services Department needs to quit serving imitation food for example; eggs, chicken, turkey, and beef. Also you state that you are not receiving proper food portions on potatoes, cake, and cold cereal. It was explained to you by Mr. Swayze, that the above mentioned products are real and have been certified for human consumption by the U.S.D.A. Mr. Swayze also explained that he has communicated with Food Service Staff and Custody Staff regarding food portions, and all staff were receptive. It should be noted that you appeared to be satisfied with this response at the time of this interview.

Based on your information above, your appeal has been granted.

If you are dissatisfied with this response you may appeal to the Second Level by following the instructions on the back of your appeal form.

Clifford Smith
CLIFFORD SMITH
Associate Warden
Business Services

c: Central File

State of California

Department of Corrections and Rehabilitation
High Desert State Prison

Memorandum

Date: April 27, 2007

To: Inmate Miller, CDC# T-97203
Housing Unit: D8-224Subject: **APPEAL LOG #HDSP-07-0907
SECOND LEVEL RESPONSE****APPEAL DECISION: Appeal Denied**

APPEAL ISSUE: You state that Food Services is discriminating towards inmates housed in Administrative Segregation by serving them imitation food.

A review of the HDSP list of "Inmates With Test of Adult Basic Education (TABE) Reading Scores of 4.0 or less" indicates that you have a Reading Grade Point Level (RGPL) above 4.0. A review of the HDSP "Assistive Device Listings" reveals that you have no disabilities requiring special accommodation to achieve effective communications.

APPEAL RESPONSE: Inmate Miller, in reaching a decision on your appeal, your CDC-602 and its attachments, applicable sections of the California Code of Regulations Title 15, the Departmental Operations Manual (DOM), and your personal interview with Assistant Correctional Food Manager W. Haworth, were reviewed and considered.

On April 24, 2007, during your interview with W. Haworth ACFM, the following was explained to you.

1. The HDSP Food Service Department utilizes the statewide-standardized menu that is authorized by a Registered Dietician.
2. HDSP Food Service Department does not purchase, cook, or serve imitation food entrée's. Ground beef is purchased with 20% soy filler from Prison Industry Authority, and an egg extender is used in scrambled eggs.
3. Lunches served to inmates housed in ASU are identical to those being served to the general population, minus the original plastic wrapping and/or container.

If you are dissatisfied with this response you may appeal to the Third Level by following the instructions on the back of your Appeal Form.



4
M. MCDONALD
Chief Deputy Warden

cc: Central File
Appeal File

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

CDC 1858 (2/97)

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE. [An inmate/parolee who makes a complaint against a departmental peace officer, knowing it is false, may be issued a serious disciplinary rule violation, in addition to being prosecuted on a misdemeanor charge.]

COMPLAINANT'S PRINTED NAME <i>ERNEST MILLER</i>	COMPLAINANT'S SIGNATURE <i>Ernest Miller</i>	DATE SIGNED <i>JANUARY-03-2007</i>
INMATE/PAROLEE PRINTED NAME <i>ERNEST MILLER</i>	INMATE/PAROLEE'S SIGNATURE <i>Ernest Miller</i>	CDC NUMBER <i>T-97203</i> DATE SIGNED <i>1-3-07</i>
RECEIVING STAFF'S PRINTED NAME	RECEIVING STAFF'S SIGNATURE	DATE SIGNED

DISTRIBUTION:

ORIGINAL -

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERNEST MILLER

PLAINTIFF or PETITIONER

v.

HIGH DESERT STATE PRISON

Case Number:

Defendant or Respondent

CD-C "B.M.U."

PROOF OF SERVICE

I hereby certify that on DEC-27, 2007, I served a copy of the attached A # 42-U.S.C # 1983, by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the United States Mail at CALIFORNIA STATE PRISON:

P.O. Box #3481
CORCORAN, CA, 93212

SENT TO:

U.S. DISTRICT COURT
NORTHERN DISTRICT OF CA
#450 # Golden GATE AVE
SAN FRANCISCO, CALIFORNIA #94102

I declare under penalty of perjury that the foregoing is true and correct.

Ernest Miller